

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

JUSTIN MCCALISTER,

PLAINTIFF

v.

Case No. 5:18-cv-00283-KGB-JTR

RONALD STUKEY, *et al.*

DEFENDANT

ORDER

Before the Court is a Partial Recommended Disposition submitted by United States Magistrate Judge J. Thomas Ray (Dkt. No. 40). Plaintiff Justin McCalister filed untimely objections to the Partial Recommended Disposition, but the Court will consider the objections (Dkt. No. 49). After a careful review of the Partial Recommended Disposition and Mr. McCalister's objections, as well as a *de novo* review of the record, the Court adopts the Partial Recommended Disposition in its entirety (Dkt. No. 40).

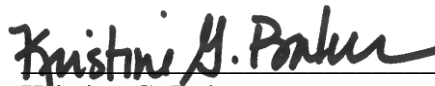
The Court writes separately to address Mr. McCalister's objections. Judge Ray recommends dismissing without prejudice Mr. McCalister's claims against defendants Correctional Officer Chelsea McGuire and Lieutenant Carolyn Eason for failure to exhaust administrative remedies (Dkt. No. 40, at 12). Judge Ray explains that the parties agree that Mr. McCalister filed six grievances relevant to his claims in this case: VSM-18-00137; VSM-18-00322; VSM-18-00458; VSM-18-00936; VSM-18-00997; and VSM-18-01033 (*Id.*, at 5-6). Judge Ray notes that Mr. McCalister did not identify Officer McGuire or Lieutenant Eason in any way nor did he allege anything about their conduct that he attributes to them in this action in grievances VSM-18-00137; VSM-18-00322; VSM-18-00458; and VSM-18-00936 (*Id.*, at 6-7). Grievances VSM-18-00998 and VSM-18-01033 expressly complain about Officer McGuire and Lieutenant Eason's actions, but these grievances were rejected as untimely because they were filed more than

15 days after the incident (*see* Dkt. No. 23-2, at 5). Accordingly, as Judge Ray explains, Mr. McCalister cannot rely on any of the relevant grievances that he filed to argue that he exhausted his claims as to Officer McGuire and Lieutenant Eason. The Court further agrees with Judge Ray that Mr. McCalister cannot establish that he was thwarted from taking advantage of the Arkansas Department of Correction's ("ADC") grievance process and complying with its procedural requirements (Dkt. No. 40, at 11).

Mr. McCalister's objection requests that the Court not dismiss the ADC officers from the case until after the Court reviews Mr. McCalister's medical records, which he alleges speak for themselves as to how defendants were deliberately indifferent (Dkt. No. 49).

The Court concludes that Mr. McCalister's objections are not relevant to the issue of exhaustion of administrative remedies as to Mr. McCalister's claims against Officer McGuire and Lieutenant Eason. Accordingly, the Court adopts the Partial Recommended Disposition in its entirety over Mr. McCalister's objections (Dkt. No. 40). The Court dismisses without prejudice Officer McGuire and Lieutenant Eason from this action. Mr. McCalister's remaining claims are that defendants Ronald Stukey, M.D., and Estella Bland failed to provide constitutionally adequate medical care for his wrist (Dkt. No. 40, at 13 n.6).

It is so ordered this 29th day of August, 2019.



Kristine G. Baker
United States District Judge